IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 783 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SAMSUDDIN ISMAIL CHHIPA

Appearance:

1. Criminal Appeal No. 783 of 1991

Ms.Hansa Punani, learned A.P.P. for Appellant.

Ms.Sadhna Sagar for Respondent.

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 16/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE SHARAD D.DAVE)

#. This appeal has been preferred by the State under Section 378 of the Criminal Procedure code, 1973 against

the order of acquittal passed by the learned Additional Sessions Judge, Bhavnagar in Sessions Case no. 103 of 1989 on 03.08.1991.

#. The short facts of the case are that the complainant Police Sub-Inspector, Palitana Town, during his duty hours at about 9.00 a.m. on 23.6.1989 received an information from the Police Constable viz. Mahipatsinh Navalsinh and Gumansinh Tapubha that one Rajasthani person is in possession of opium at S.T.bus stand. On receiving this information, the Police Sub-Inspector went to the S.T.station and found one person sitting on a bench at the platform no.6 possessing one bag. On interrogation, that person gave his name as Samsuddin Ismail Chhipa, residing of village Dungla, District : Chithodgadh, Rajasthan. That person was asked to open his bag and there were two plastic bundles and it was smelling opium. Two panchas viz.Santhrambhai Lakhimal Ahuja and Chandulal Ramniklal Barot, resident of Palitana were called and the panchas opened the bag and on opening the plastic bags it was found that it contained opium. Weighing scale was brought from S.T.canteen and one plastic bag was weighed and it contained 2 kgs. 25 gms. of opium and another bag contained 1 kg. 300 gms. of opium. After taking the samples, they were sealed and after following necessary procedure, the samples were sent for analysis and at the end of investigation, charge sheet was submitted which was numbered as Sessions Case No. 103 of 1989 and charge was framed against the accused. As the accused pleaded not guilty and prayed for trial, the prosecution examined oral witnesses and also placed reliance on the documents. On completion of the same, further statements of the accused under Section 313 of the Criminal Procedure Code were recorded and after hearing the learned counsel for the respective parties, the accused was acquitted.

#. We have heard the learned counsel for the parties. Learned A.P.P. for the state submitted that the prosecution has proved beyond reasonable doubt that the muddammal in question has been seized from the accused and also proved that same has been found as contraband article charas and there are no material contradictions which resulted into acquittal and court below ought to have considered the same and ought not to have acquitted the accused. During the course of arguments, she has fairly admitted that it is true that secret information which was received by the complainant was not reduced in writing. It is also admitted by her that the complainant has also not informed the accused regarding his valuable right to search and seizure before Gazetted Officer or

Magistrate. It is also admitted that even weight has not been done at the time of search and seizure. Learned counsel Ms.Sadhna Sagar who appeared on behalf of the accused has also argued the same. For that he took us through the above referred evidence and also the reasoned judgment and argued that it does not require any interference.

#. It reflects from the complaint, panchanama and oral evidence of complainant that when the complainant received secret information, same was not reduced in writing by him and has also not informed regarding the same to his superior officer within the period of 48 hours. It is also established that before the search and seizure accused was not informed by the P.S.I.regarding his valuable right to be search and seizure before the Magistrate/Gazetted Officer which reflects from the evidence of complainant. In short, it has been established from the evidence on record that in this case prosecution has failed to comply with the provisions of Sections 42 and 50 of the N.D.P.S.Act as the information which has been received by the concerned officer has not been reduced in writing. In the same way, there is a breach of Section 50 that accused has not been informed regarding his valuable right of search and seizure before the Magistrate/Gazetted Officer and it being a mandatory provision, Court below has rightly acquitted the accused after considering the same along with other aspects of the matter. One more thing which goes in favour of the accused is that the prosecution has also failed to prove that the accused was in possession of the bag from which the alleged narcotic substance was found. Therefore, considering all these aspects, the Court below has rightly acquitted the accused and we do not think it proper to interfere with the same.

#. In view of the above facts and circumstances, this appeal requires to be dismissed and accordingly it is dismissed.

(R.P.DHOLAKIA, J)

(SHARAD D DAVE, J)

srilatha